



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.  
COLUMBIA, SOUTH CAROLINA

October 28, 2008

**VIA ELECTRONIC FILING**

Mr. Charles Terreni, Chief Clerk of the Commission  
Public Service Commission of South Carolina  
Synergy Business Park, Saluda Building  
101 Executive Center Drive  
Columbia, SC 29210

**Bonnie D. Shealy**  
1901 MAIN STREET, SUITE 1200  
POST OFFICE BOX 944  
COLUMBIA, SOUTH CAROLINA 29202

PH  
(803) 778-8900  
FAX  
(803) 252-0724

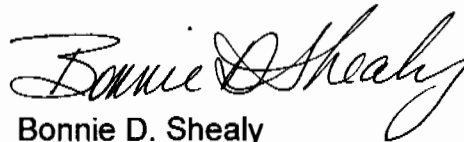
**Re: Time Warner Cable Information Services' Application to Amend its  
Certificate of Public Convenience & Necessity to Provide Telephone  
Services in the Service Area of PBT Telecom, Inc.  
Docket No. 2008-328-C**

Dear Mr. Terreni:

Enclosed for filing please find Time Warner Cable Information Services' ("TWCIS") Reply to the Return of PBT Telecom, Inc. to TWCIS Motion to Compel or, in the alternative, Motion *in Limine*. By copy of this letter we are serving the same on the parties of record. If you have any questions, please have someone on your staff contact me.

Very truly yours,

ROBINSON, MCFADDEN & MOORE, P.C.

  
Bonnie D. Shealy

BDS/tch  
Enclosures  
cc/enc:

Randall Dong, Hearing Examiner (via email & U.S. Mail)  
Nanette S. Edwards, Esquire (via email & U.S. Mail)  
Jeffrey M. Nelson, Esquire (via email & U.S. Mail)  
M. John Bowen, Jr. (via email & U.S. Mail)  
Margaret M. Fox (via email & U.S. Mail)  
Sue-Ann G. Shannon, Esquire (via email & U.S. Mail)  
C. Bradley Hutto, Esquire (via email)  
Julie P. Laine, Group Vice President Regulatory (via email)  
Charlene Keys, Vice President & General Manager (via email)

## STATE OF SOUTH CAROLINA

**In Re: Application of Time Warner Cable  
Information Services (South Carolina) LLC, d/b/a  
Time Warner Cable to Amend its Certificate of  
Public Convenience and Necessity to Provide  
Telephone Services in the Service Area of PBT  
Telecom, Inc. and for Alternative Regulation**

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

## COVER SHEET

**DOCKET  
NUMBER: 2008-328-C**

(Please type or print)

Submitted by: Bonnie D. ShealySC Bar Number: 11125

Address: Robinson, McFadden & Moore, P.C.  
PO Box 944  
Columbia, SC 29202

Telephone: (803) 779-8900Fax: (803) 252-0724

Other: \_\_\_\_\_

Email: bshealy@robinsonlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

**DOCKETING INFORMATION** (Check all that apply)

- ☐ Emergency Relief demanded in petition      ☐ Request for item to be placed on Commission's Agenda expeditiously
- ☐ Other: \_\_\_\_\_

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)			
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request	
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certificatio	
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigatio	
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement	
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment	
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter	
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input checked="" type="checkbox"/> Response	
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery	
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition	
<input checked="" type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena	
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff	
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:	
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest		
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit		
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report		

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

**Docket No. 2008-328-C**

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In Re: Application of Time Warner Cable Information	)
Services (South Carolina) LLC, d/b/a Time	)
Warner Cable to Amend its Certificate of Public	)
Convenience and Necessity to Provide	)
Telephone Services in the Service Area of	)
PBT Telecom, Inc., and for Alternative	)
Regulation	)

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**TIME WARNER CABLE'S REPLY TO THE RETURN OF  
PBT TELECOM, INC.  
TO TIME WARNER CABLE'S MOTION TO COMPEL OR,  
IN THE ALTERNATIVE, MOTION *IN LIMINE***

Pursuant to 26 S.C. Code Ann. Regs. 103-829 and other applicable rules of the South Carolina Public Service Commission, Time Warner Cable Information Services (South Carolina) LLC, d/b/a Time Warner Cable ("TWCIS") files this Reply to PBT Telecom, Inc.'s ("PBT") Return to Time Warner Cable's Motion to Compel or in the Alternative, Motion *In Limine*. TWCIS seeks in its motion to compel to require PBT to provide certain information sought in discovery which PBT has refused to provide. Rule 103-833 of this Commission's Rules of Practice and Procedure allow TWCIS to obtain through interrogatories and requests to produce "[a]ny material relevant to the subject matter involved in the pending proceeding..." The information requested by TWCIS is relevant and PBT should be required to produce it.

**I. The Information Sought By Time Warner Cable Is Relevant.**

In this proceeding TWCIS seeks to extend its existing authority to operate as a telephone utility into areas of South Carolina where PBT is the incumbent local exchange carrier. The application is governed by S.C. Code Section 58-9-280(B). One of the items which the Commission can review under Section 58-9-280 is whether "provision of the service will not

adversely impact the availability of affordable local exchange service.” Because of this provision, the effect of TWCIS’ proposed entry upon the incumbent local exchange carrier, PBT Telephone, and, therefore, PBT’s financial strength is entirely relevant to this proceeding. Accordingly, TWCIS is entitled to the discovery it seeks.

Section 58-9-280 has applied to every CLEC application filed and granted in South Carolina. It also applied to the previous applications TWCIS filed by which it obtained the authority under which it currently operates in South Carolina. In none of these previous proceedings has an issue been raised about whether the service proposed to be offered by the applicant will cause sufficient economic harm to the incumbent that the affordability of local exchange service will be affected. For this reason TWCIS approached PBT with a request that PBT clarify whether it would raise that issue in this proceeding. If PBT would agree that it was not going to raise the issue, then the scope of discovery could be narrowed. However, PBT has refused to respond to this request and state its position and instead has explicitly reserved the right to raise the issue of whether TWCIS’s entry into their service territory will adversely impact the availability of local exchange service. Accordingly, unless and until PBT confirms that it will raise as an issue and argue that TWCIS’ entry into its territory will adversely affect PBT and, as a result, the affordability of local service, PBT must be required to produce the financial information requested in the TWCIS discovery requests.

## **II. The Annual Reports Produced By PBT Are Insufficient.**

PBT argues in its Return that the TWCIS motion should be denied because PBT produced copies of its publicly available Annual Reports filed with ORS and this Commission. In the first place that argument ignores the scope of discovery – TWCIS is entitled to receive information and documents relevant to the issues in the proceeding, not information which PBT

is willing to give. In addition, the Annual Reports are not a sufficient source of information about the finances of PBT and the other incumbent local exchange carriers.

TWCIS has begun to review the Annual Reports of PBT and the other five companies with which PBT is coordinating its efforts. That review raises questions about the information shown in the Annual Reports and demonstrates why TWCIS needs more detailed and specific financial information.

- It appears that some of the six ILECs classify revenues differently from others. For example, for 2007 Comporium company PBT Telecom, Inc. reported “Total Revenues” of \$18,754,047 and reported no “Non-Operating Income”, while Comporium company Rock Hill Telephone Company reported “Total Revenues” of \$39,696,228 with an additional \$27,888,178 in “Non-Operating Income”.
- None of the Annual Reports of the six ILECs separately report revenues they receive from the federal or state universal service funds. While the six ILECs have produced that information in response to discovery requests, Time Warner Cable needs to know where and how those USF revenues are reflected in the Annual Reports.
- Farmers Telephone Cooperative reports \$103,695,603 in year-end retained earnings on Schedule 3 to its 2007 Annual Report. That Schedule also shows that Farmers started 2007 with \$125,668,581 in retained earnings. Changes during the year include: a “Miscellaneous” debit of \$48,304,342; a “Miscellaneous” credit of \$23,607,849; an “Other” credit of \$27,209,815; and an “Other” credit of \$76,485,788. Enormous sums of money are moving around on the Farmers balance sheet with absolutely no explanation in its Annual Reports.

These examples are given not to assert that the companies are failing to properly report their finances, but rather to show that the Annual Reports are insufficient sources of information

for TWCIS to use to respond to PBT's expected arguments regarding the effects of TWCIS' proposed entry into its territory. Accordingly, PBT's argument that the Annual Reports are sufficient should be rejected and it should be ordered to produce the financial information requested by TWCIS.

Dated this 28<sup>th</sup> day of October, 2008.

ROBINSON, MCFADDEN & MOORE, P.C.

By   
Frank R. Ellerbe, III  
Bonnie D. Shealy  
1901 Main Street, Suite 1200  
Post Office Box 944  
Columbia, SC 29202  
Telephone: (803) 779-8900  
[fellerbe@robinsonlaw.com](mailto:fellerbe@robinsonlaw.com)  
[bshealy@robinsonlaw.com](mailto:bshealy@robinsonlaw.com)

and

C. Bradley Hutto, Esquire  
Williams & Williams  
Post Office Box 1084  
Orangeburg, South Carolina 29115  
[cbhutto@williamsattys.com](mailto:cbhutto@williamsattys.com)  
Telephone 803-534-5218  
Facsimile 803-536-6544

Attorneys for Time Warner Cable Information  
Services, (South Carolina), LLC

**BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
DOCKET NO. 2008-328-C**

In Re:

**Application of Time Warner Cable Information  
Services (South Carolina) LLC, d/b/a Time  
Warner Cable to Amend its Certificate of  
Public Convenience and Necessity to Provide  
Telephone Services in the Service Area of PBT  
Telecom, Inc. and for Alternative Regulation**

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**CERTIFICATE OF SERVICE**

This is to certify that I, Leslie Allen, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below **Time Warner Cable's Reply to the Return of PBT Telecom, Inc. to Time Warner Cable's Motion to Compel or, in the alternative, Motion *in Limine*** in the foregoing matter by causing a copy of same to be placed in the U.S. Mail in an envelope addressed as follows:

Nanette S. Edwards, Esquire  
Jeffrey M. Nelson, Esquire  
Office of Regulatory Staff  
P.O. Box 11263  
Columbia, SC 29211

M. John Bowen, Jr. Esquire  
Margaret M. Fox, Esquire  
McNair Law Firm, PA  
P.O. Box 11390  
Columbia, South Carolina 29211

Dated at Columbia, South Carolina this 28<sup>th</sup> day of October, 2008.



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Leslie Allen